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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 715

WILLIAM M. JACOBS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on November 1, 1963. A petition for rehearing was denied on December 3, 1963. The petition for a writ of certiorari was filed on December 30, 1963. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner's conviction in a conspiracy case should be reversed because the court of appeals reversed the conviction of one of petitioner's co-defendants on the ground that the evidence against the co-defendant was insufficient to link him to the conspiracy.

STATEMENT

Petitioner and others were convicted by a jury in the United States District Court for Massachusetts on the second count of a two count indictment charging a conspiracy to defraud the United States in connection with the administration of the Federal Road Aid Act. The gravamen of the offense was an agreement to submit inflated appraisals to the Massachusetts Department of Public Works which had taken portions of certain property owned by one of the defendants in connection with designated federal-state highway projects. Petitioner received a one-year jail sentence and a $5,000 fine.

The record shows that in 1958 and again in 1960 the Massachusetts Department of Public Works acquired two separate portions of a 13.82 acre lot in Lowell, Massachusetts owned by Joada Realty Corporation which was controlled by co-defendant Reiss. The takings were for highway projects which were partially financed by the United States. In each instance, the Department's staff appraisers estimated

Joada's loss from the taking at greater than $2,500. Pursuant to the governing statute, the Department was therefore required to obtain independent appraisals of Joada's damages. Fred B. Dole, an associate commissioner of the Department in charge of land acquisitions, chose petitioner to serve as one of the independent appraisers in connection with both takings. As to the second taking, which is the only one here involved, petitioner submitted an estimate of more than $86,000 and DeSimone, the other appraiser appointed by Dole, an appraisal of over $89,000. It is not now disputed, as the court below held, that the jury could find that the appraisals were so grossly excessive as to justify a finding that they were knowingly dishonest.

The court of appeals sustained the convictions of Joada Realty, Reiss and petitioner; but reversed Dole's conviction on the ground that the evidence was insufficient to prove that he had any part in the conspiracy or had acted carelessly in connection with the submission of the inflated appraisals by his appointees (Pet. App. A).[1]

In a petition for rehearing, petitioner alleged that the evidence as to Dole "cannot be segregated so as to say it did not prejudice the defendant, Jacobs; and the Court cannot know the basis on which the Jury arrived at its conclusion. It may very well be that it arrived at its finding on the evidence largely relating to Dole." (Pet. App. B). The court denied

[1] De Simone did not appeal.

the petition for rehearing in a *per curiam* opinion (Pet. App. C).

ARGUMENT

Petitioner argues in this Court, as he did in the petition for rehearing below, that the reversal as to Dole requires reversal of his conviction. There is no merit to this contention. The core of the conspiracy was the agreement among petitioner, De Simone and Reiss to submit grossly inflated estimates of the value of the property taken from Reiss's company. The question as to Dole was whether he knowingly sought to further that conspiracy by appointing a man who he knew would submit excessive appraisals on Reiss's behalf and by passing along appraisals which he knew to be excessive (see the opinion of the district court summarizing the evidence as to Dole (R. 436)). The ruling of the court of appeals that the evidence did not show such knowing participation by Dole does not detract from the independent evidence which proved the underlying conspiracy among petitioner, De Simone and Reiss. This is clearly not a case in which the participation of the defendant against whom the judgment of conviction has been reversed is necessary to establish the crime charged. *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 243-248. The evidence against petitioner has been fully evaluated and there is no occasion for further review.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
DAVID N. ELLENHORN,
Attorneys.

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